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KRISHNASAMY SUPRAMANY

v.

ARAB-MALAYSIAN FINANCE BHD

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HIGH COURT MALAYA, IPOH
BALIA YUSOF WAHI J
[GUAMAN SIVIL NO: 22-157-1999]
25 NOVEMBER 2008

C ***HIRE PURCHASE:*** *Breach of agreement - Purchase of motor car - Registration card of car belonged to motorcycle - Finance company failed to register car properly upon full payment of purchase price - Whether in breach of fundamental term of agreement - Whether agreement null and void - Contracts Act 1950, s. 57(2)*

D ***HIRE PURCHASE:*** *Breach of agreement - Damages - Registration card of car belonged to motorcycle - Finance company failed to register car upon full payment of purchase price - Whether in breach of fundamental term of agreement - Whether must refund sum already paid - Whether liable in damages - Measure of damage*

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By a hire purchase agreement dated 19 March 1991, the plaintiff agreed to purchase a car from the defendant finance company for RM32,000. The plaintiff paid RM9,900 as deposit therefor and a loan of RM12,100 repayable in 35 installments was granted to the
F plaintiff by the defendant. Having paid some RM27,092 towards the car, the plaintiff approached the defendant with a view of settling the purchase price in full and transferring the car to himself. The defendant, however, was unable to accede to the request as the Road Transport Department ('JPJ'), having
G discovered the registration card of the car to belong not to the car but to a certain motorcycle, blocked the registration thereof. The plaintiff asked the defendant to take back the car and repay his RM27,092, but the defendant refused arguing that the matter was beyond its control. Aggrieved, the plaintiff filed the present
H suit claiming *inter alia* for a declaration that the hire purchase agreement was null and void, the return of his money aforesaid and RM10,000 in damages for the anxiety he has had to endure as a result of his problem with the hire purchase agreement with the defendant.

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Held (allowing plaintiff's claim):

(1) When the defendant entered into the said agreement it is expressly stated that the defendant is the owner of the vehicle and is capable of giving a good title to the plaintiff whenever the plaintiff decides to settle the purchase price in full. From the evidence, it is clear that the said motorcar was never at all registered with the JPJ and it is doubtful whether there was such a vehicle which has that registration number with the JPJ. That being so, there was a total failure of consideration. It is impossible for the defendant to transfer the vehicle to the plaintiff, and that being so, the said agreement has become void within the contemplation of s. 57(2) of the Contracts Act 1950. (para 10)

(2) The defendant's failure to deliver the proper registration card and to have the car properly registered upon the full payment by the plaintiff is a beach of a fundamental term of the hire purchase agreement. Consequently the plaintiff as hirer is entitled to treat the hire purchase agreement as discharged and to claim for damages for the breach or for the return of the money already paid under the agreement (*Arab Malaysian Finance Bhd v. Samian Sabia & Anor*). The plaintiff is therefore entitled to the refund of the RM27,092. (para 13)

(3) The plaintiff's claim for storage fees and the expenses for hiring a car is not allowed for insufficiency of evidence. However, the court would allow the claim for general damages for the anxiety and inconvenience caused to him, including the inconvenience of being deprived the use of the car which he had purchased from the defendant. The court also accepted the fact that the plaintiff had been blacklisted and was not in a position to obtain financing from any financial institution as a result of the problem that he had with the defendant. (para 15)

(4) As a general principle, the measure of damage for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty and this includes consequential damages. The plaintiff is entitled to claim for loss of use in the form of general damages. Having considered the evidence, the court is of the view that the sum of RM10,000 claimed by the plaintiff under this heading is modest, just and reasonable. (para 15)

A **Case(s) referred to:**

Arab-Malaysian Finance Bhd v. Samian Sabia & Anor [2003] 2 CLJ 115 HC ***(refd)***

BBMB Kewangan Bhd v. Tan Swee Heng & Anor [2002] 7 CLJ 377 HC ***(refd)***

B *Foong Chee Chong v. Inspector Mohd Nasir Shamsuddin & Anor [1998] 1 LNS 32* ***(refd)***

Heng Long Motor Trading Co v. Osman Abdullah [1994] 3 CLJ 754 HC ***(refd)***

Magnum Finance Bhd v. Tan Ah Poi & Anor [1997] 4 CLJ Supp 44 HC ***(refd)***

C *Public Finance v. Ehwan Saring [1996] 1 CLJ 628 HC* ***(refd)***

Yip Shou Shan v. Sin Heap Lee – Marubeni Sdn Bhd [2002] 5 CLJ 574 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 57(2)

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For the plaintiff - Sakthivel; M/s Sakthi & Co
For the defendant - Thinakaran; M/s Lalchand & Nawawi

Reported by Wan Sharif Wan Ahmad

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JUDGMENT

Balia Yusof Wahi J:

Facts

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[1] By way of a hire purchase agreement dated 19 March 1991, the plaintiff bought a BMW car bearing the registration No: KK 1109, engine No: 6716823 and chasis No: WBA 18120006716823. The defendant is the owner of the said car, and as agreed between them, the purchase price is RM32,000. The plaintiff paid RM9,900 as a deposit and a loan in the sum of RM22,100 was granted to the plaintiff by the defendant. The said loan was repayable in 35 monthly installment of RM614, the last installment being RM610.

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[2] On or about 1 July 1993 the plaintiff went over to the defendant's branch office at Teluk Intan and enquired about the amount of loan outstanding with a view to settle it in full as he had found a purchaser who was interested to buy the car from him. Instead, the plaintiff was told by an officer of the defendant that the transfer of the said car could not be effected as the registration card of the same had been detained by the Jabatan Pengangkutan Jalan (JPJ). According to the JPJ the registration

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card of the vehicle No: KK 1109 belongs to a motorcycle model FR 80 and not the BMW car bought by the plaintiff. The defendant had on 23 April 1991 submitted an application for the transfer of ownership of the said vehicle to the JPJ. Upon a letter of reminder by the defendant dated 16 July 1993 the JPJ replied in their letter dated 26 July 1993 informing the defendant that the department could not approve the application for the transfer.

[3] Upon hearing that the transfer of the vehicle could not be effected, the plaintiff requested the defendant to take back the car and at the same time asked for the return of his deposit of RM9,900 and a further sum of RM17,192 being the amount of 28 monthly installments paid to the defendant. Since then, the plaintiff has repeatedly asked the defendant to take back the car and for the return of his money. On 8 July 1994 the defendant instituted an action against the plaintiff claiming for arrears of installment amounting to RM4,926.07 in the Teluk Intan Magistrates Court *via* Saman No: 72-110-1994 but later discontinued the action *via* notis pemberhentian dated 29 August 1994. On 10 August 1997 the plaintiff wrote a letter (exh. P2) to the defendant informing the same that he will be charging storage fees at RM20 per day from the month of July 1993 to the date of the said letter and RM50 per day until the case is repossessed by the defendant. On 10 September 1997 the defendant replied *via* a letter dated the same (p. 13 encl. 24, the agreed bundle of document) informing the plaintiff that they were not able to do so as the JPJ has not approved the transfer and that the matter is beyond the defendant's control. The present suit against the defendant was filed by the plaintiff on 19 May 1999. The claims of the plaintiff are as follows:

(1) Satu deklarasi bahawa surat perjanjian sewa beli bertarikh 19 March 1991 di antara plaintiff dan defendan adalah batal.

(2) Defendan mengembalikan wang sebanyak RM27,092 kepada plaintiff.

(3) Bayaran bagi simpan kereta.

(4) Gantirugi am dan khas.

(5) Faedah.

A (6) Kos.

(7) Relief lain atau sebagainya yang dianggap sesuai oleh mahkamah.

The Defence

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[4] In defence, the defendant states that a receipt was issued by the JPJ acknowledging that an application for the transfer of the vehicle was submitted. However it is admitted that the receipt is only proof of payment for the application but not an approval C of the application. The defendant also admitted that they used the services of a "runner" to do the transaction and the defendant does not actually had knowledge what really has transpired or happened in the process. The original registration card was held by the JPJ and never returned to the defendant. The defendant D also admits that no action to repossess the car from the plaintiff was taken and no reason was given for that stance taken.

Issues

E **[5]** Whether the defendant has a good title to said BMW car No: KK 1109 when the Hire Purchase Agreement was entered into on 19 March 1991 and whether the same can give a good title to the plaintiff.

Evidence

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[6] The plaintiff closed his case after SP1 gave evidence and thereafter SD1 was called as a witness for the defence. After the close of the defence case, the plaintiff made an application to reopen the plaintiff's case to enable him to call another witness G for the plaintiff. The application in Lampiran 44 was subsequently heard and argued in open court. Upon hearing submissions from both parties, the application was allowed and SP2 was called to the stand to give evidence in support of the plaintiff's case.

H **[7]** SP2, one Salehuddin bin Saman is an officer of the JPJ, Ipoh who holds the post of Ketua Unit Tukar Milik dan Rekod, JPJ, Ipoh. In his evidence the witness states that according to the records of the department, the vehicle No: KK 1109 belongs to a Motorcycle, Suzuki FR80 and produced the record which was I marked as exh. P5.

[8] According to exh. P5, the owner of the said vehicle is one Mohd. Zaki bin Hanafi and the record is classified under 'Status O'. According to the witness, 'Status O' means 'rekod tidak sah' and by 'rekod tidak sah' it means, to quote his evidence in court:

> Rekod tidak sah bermakna data ada dalam computer tetapi bagi tujuan pengesahan kenderaan diperlukan untuk pemeriksaan dan kad pendaftaran kenderaan perlu dikemukakan kepada JPJ dan salinan kad pengenalan pemilik kenderaan berkenaan.

He went on to state that:

> Status O bermakna kenderaan tersebut tidak boleh di pindah milik.

[9] It is very apparent that the details in the copy of the registration card (at pp. 5 and 6 of the agreed bundle of document) which was given to the plaintiff by the defendant when he signed the Hire Purchase Agreement is different from the records of the vehicle No: KK 1109 held by the JPJ. Upon being questioned by the court, this witness confirms that the record maintained by the department in exh. P5 is conclusive of the current status of the vehicle, which means, it is not transferrable. The evidence also discloses that at no time was the car BMW KK 1109 handed over to the JPJ for inspection.

[10] From the facts enumerated above it is crystal clear that the defendant as owner of the said motor car is not in a position to transfer the same to the plaintiff. When the defendant entered into the said agreement it is expressly stated as an express condition of the agreement that it is the owner of the vehicle and it is represented that it was capable of giving a good title to the plaintiff whenever the plaintiff decides to settle the purchase price in full. From the evidence, it is established that the said motorcar was never registered at all with the JPJ and it is doubtful whether there was such a vehicle which has that registration number with the JPJ. That being so, clearly there is a total failure of consideration. Under the circumstances, is also very clear that it is impossible for the defendant to transfer the vehicle to the plaintiff and that being so, it is my view that the said agreement has become void within the contemplation of s. 57(2) of the Contracts Act 1950 which reads:

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> ... A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

B **[11]** The said BMW motor car No: KK 1109 Engine No: 6716823 and chasis no: WBA 18120006716823 was never registered as stated in the agreement and never exist in the record of the JPJ.

[12] The case of *Magnum Finance Bhd v. Tan Ah Poi & Anor* C [1997] 4 CLJ Supp 44 cited by the plaintiff has very much similarity with this case and I fully concur with the proposition of law made by the learned judge therein. Having referred to the other authorities of *Public Finance v. Ehwan Saring* [1996] 1 CLJ 628 and *BBMB Kewangan Bhd v. Tan Swee Heng & Anor* [2002] D 7 CLJ 377 cited by the learned counsel for the plaintiff, I am in agreement with the court's view in both cases in concluding that:

- the conduct and actions of the Financial Institutions showed that they had held themselves as owners of the vehicle at E the time the Agreement was entered into and that they were capable of giving a good title to the hirer whenever he might choose to end the hiring by paying the balance due;

- the conditions and warranties under s. 7(1) of the Hire Purchase Act 1967 must apply and the seizure caused the F Financial Institutions to be in breach of all the three conditions and warranties therein which goes to the root of the Agreement and upon such breach, the hirer's liability under the Agreement comes to an end;

- following the seizure of the vehicle, the Financial Institution, G as owner, could no longer fulfill any of the conditions and warranties under s. 7(1) of the Hire Purchase Act 1967. There was thus a complete failure of consideration of the Agreement such as to warrant the application of ss. 57(2) and 66 of the Contracts Act 1950;

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- when there was total failure of consideration and when the hirer did not get what he had bargained for, the Agreement becomes void and the hirer is entitled to recover whatever money he had paid under the Agreement.

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[13] The facts and circumstances of the two cases referred to above are very much similar to the facts and circumstances of the present case and I find comfort in having had to rely on those two judgments of my learned brothers. I place reliance on those two cases in support of my decision here. The failure of the defendant to deliver the proper registration card and to have the car properly registered upon the full payment by the plaintiff, is a breach of a fundamental term of the hire purchase agreement. As such, the plaintiff as the hirer is entitled to treat the hire purchase agreement as discharged and entitled to claim for damages for the breach of the said agreement or for the return of the money already paid under the agreement. (See: *Arab Malaysian Finance Bhd v. Samian Sabia & Anor* [2003] 2 CLJ 115). I hold that the plaintiff is entitled for the refund of the sum he has paid under the hire purchase agreement which is equivalent to RM27,092.

[14] In his evidence, the plaintiff is claiming RM14,400 as damages arising out of the expenses he had to incur to hire a car for his use for a period of six months at the rate of RM80 a day. The plaintiff is claiming another RM10,000 as damages for anxiety caused to him as a result of him being blacklisted by financial institutions as the result of his problem with the hire purchase agreement with the defendant and for the hassle he had to go through in buying another car using his wife's name. The plaintiff is further claiming storage fees for the car at his house initially at RM20 per day and from the month of July 1993 onwards at a rate of RM50 per day.

[15] Considering the evidence available before me, I disallowed the plaintiff's claim for storage fees and his expenses for hiring a car on the ground that there is insufficient evidence to support such claim. However I allowed the plaintiff's claim for general damages for the anxiety and inconvenience caused to him as a result of the problem he had with the defendant finance company. I accepted the fact that he had been blacklisted and was not in position to obtain financing from any financial institution and also the inconvenience of being deprived the use of the car which he had purchased from the defendant. As a general principle, the measure of damage for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary cause of events, from the breach of the warranty and this includes consequential damages. The plaintiff is entitled to claim for loss of use in the

A form of general damages. Assessment of damages are based on the evidence adduced and to some extent, the damage may have been inferred or presumed. (See: *Heng Long Motor Trading Co v. Osman Abdullah* [1994] 3 CLJ 754). Having considered the evidence in its totality I am of the view that the sum of RM10,000 claimed by B the plaintiff under this heading is unquestionably modest, just and reasonable.

[16] It has further been submitted by the learned counsel for the plaintiff that until the date of hearing, the defendant has still failed C either to give a valid transfer of the said car to the plaintiff or to repossess the same. Such indifference and irresponsible conduct of the defendant, in the learned counsel's view merits the grant of exemplary damages against them. His Lordship Mohd. Nor Ahmad J (as he then was) in *Yip Shou Shan v. Sin Heap Lee – Marubeni* D *Sdn. Bhd* [2002] 5 CLJ 574 has categorized the circumstances under which exemplary damages may be awarded. (See also: *Foong Chee Chong v. Inspector Mohd. Nasir bin Shamsuddin & Anor* [1998] 1 LNS 32). Suffice it to say that the facts and circumstances of the instant case before me do not merit the making of such an E award against the defendant. The plaintiff's claim for exemplary damages must fail.

[17] In conclusion, the plaintiff's claims are allowed in the following terms:

F (a) The hire purchase against dated 19 March 1991 is declared void;

(b) The plaintiff's claim for the refund of RM27,092 is allowed;

G (c) General damages in the sum of RM10,000 is allowed;

(d) Costs to the plaintiff; and

(e) Interest at 8% per annum on the amount awarded under paras (b) and (c) above from the date of filing of the writ of H summons to the date of realization.

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